

READING CLERK: Amendment No. 3 to Committee Recommendation R&P-2 by Delegates Scanlan and Moser:

On page 2 strike out all of section 3, Separation of Powers, comprising lines 4 through 11, inclusive.

THE CHAIRMAN: The amendment having been submitted by Delegate Scanlan and seconded by Delegate Moser, the Chair recognizes Delegate Scanlan to speak to the amendment.

DELEGATE SCANLAN: This might not be good in a dice game, but I am handing over the dice to my co-sponsor, Delegate Moser.

THE CHAIRMAN: The Chair recognizes Delegate Moser.

DELEGATE MOSER: Mr. Chairman, I appreciate the confidence of my co-sponsor.

This provision we think is not adequately taken care of by provisions already adopted in the judicial, legislative, and executive branches. Moreover, it has some serious flaws in it, as recognized by the Majority Report in discussing it. These flaws relate to the problem of administrative agencies which exercise legislative and judicial powers and this provision might be construed by its adoption as rendering this unconstitutional.

There is a companion piece, I think, which the General Provisions Committee may be recommending, which does something similar to that, and a section to remedy this defect. However, it does not remedy a second defect which is in this, and that is one in the local government area.

One of the things that is contemplated by the local government article is that each unit, or rather each county, in adopting the home rule charter, may provide for a combined legislative and executive unit. That is, a county council may exercise both legislative and executive functions.

I have never thought of this before, but it is quite likely that Wicomico County's County Council may well be unconstitutional since this is a carry over from the existing Constitution, and would as it reads literally prohibit that type of arrangement. For these reasons, we recommend that this be deleted.

THE CHAIRMAN: The Chair recognizes Delegate Child.

DELEGATE CHILD: Mr. Chairman, I would oppose the amendment because I

think that this provision, which is now section 8 of our present Constitution, should remain where it is. It was in the Constitution of 1776, 1851, 1864, and is in our present Constitution.

Now, we have said here in adopting our various executive, legislative, and judicial branches, that the executive department shall be vested in a governor, the legislative in the General Assembly, the judicial in the four-tier court system, but nowhere have we said that the governor cannot be the Chief Judge of the Court of Appeals, and this is exactly what that section says: that one section of the government, that is, one part of the government cannot exercise the functions of the other branch.

The whole system of our government is a system of checks and balances, one against the other, and if we combine them, I think we are getting into serious trouble, and we should not do it. I think that this is a fair constitutional provision. It should stay in there.

It has been the subject of a long line of decisions of the Court of Appeals, one, I believe, in 229 Maryland. I oppose the amendment. I think it is the right of the people to know what section or what part of the government they are dealing with, and that they are not mixing one with the other.

THE CHAIRMAN: Delegate Boileau.

DELEGATE BOILEAU: Mr. Chairman, I desire to speak in favor of the amendment.

Another section with which we would bring about a built in conflict is the very end of section 4.10, already adopted, powers and duties of the successor to the governor, and there it says when the president of the Senate serves as acting governor, he shall continue to be president of the Senate, but during his service as acting governor his duties as president shall be performed by such person as the Senate shall select.

When the Committee discussed this, it was noted that we did not want to deny a president of the Senate who would be indeed acting governor for an hour or a day or some period of time less than that which would result in his becoming permanent governor of the State for the remainder of the term, his seat in the Maryland Senate. As I said earlier, this section, section 3, would provide certain built in conflicts that may put it in question.

THE CHAIRMAN: Does any delegate desire to speak in opposition?

Delegate Marvin Anderson.